

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT No. 1 TO LEASE NO. GS-02P-LNY24174
ADDRESS OF PREMISES: 250 Delaware Avenue Buffalo, NY 14202-2014	PDN Number: PS0035023

THIS AGREEMENT, made and entered into this date by and between **DNC 250, Inc.**

whose address is: **100 Corporate Parkway, Suite 500, Amherst, NY 14226**

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to: (1) to revise the square footage of the Government leased space; (2) memorialize the terms of the parking; (3) establish the fully serviced rent; (4) establish the Broker Commission and Commission Credit; (5) establish the renewal rights; (6) establish the total Tenant Improvements (TI) allowance; (7) establish the total Building Specific Amortized Capital (BSAC); (8) provide for a one time lump sum payment for TI Costs above the TI Allowance; (9) revise the percentage of occupancy; and (10) revise the operating cost base.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, as follows:

1. The Government hereby leases an additional 2,690 ANSI/BOMA Office Area Square Feet (ABOASF) / 3,082 Rentable Square Feet RSF from the Lessor. The Premises as defined in the Lease in Paragraphs 1.01 is modified and replaced as follows:

1.01 THE PREMISES (JUN 2012)

The Premises are described as follows:


A. Office and Related Space: A total of 53,314 RSF, yielding 46,534 ABOASF comprised of 50,232 RSF / 43,844 ABOA SF of office and related Space located on the 7th and 8th floors, and an additional 3,082 RSF / 2,690 ABOASF on the 1st floor of the Building, as depicted on the floor plan(s) attached hereto as Exhibit "A".

This Lease Amendment contains 13 pages.


All other terms and conditions of the Lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the below date.


FOR THE LESSOR:

Signature: 
 Name: Michael Montante
 Title: President
 Entity Name: DNC 250, Inc.
 Date: June 8, 2016

FOR THE GOVERNMENT:

Signature: 
 Name: Mary Nowobilski
 Title: Lease Contracting Officer
GSA, Public Buildings Service
 Date: June 10, 2016

WITNESSED FOR THE LESSOR BY:

Signature: 
 Name: LYUBOV GOLETA
 Title: SALES SECRETARY
 Date: JUNE 8, 2016

B. **Common Area Factor:** The Common Area Factor (CAF) is established as **14.57** percent. This factor, which represents the conversion from ABOA to rentable square feet, rounded to the nearest whole percentage, shall be used for purposes of rental adjustments in accordance with the Payment Clause of the General Clauses.

2. The Parking requirement, as defined in the Lease in Paragraphs 1.02 A, is modified and replaced as follows:

1.02 EXPRESS APPURTENANT RIGHTS (SEP 2013)

The Government shall have the non-exclusive right to the use of Appurtenant Areas, and shall have the right to post Rules and Regulations Governing Conduct on Federal Property, Title 41, CFR, Part 102-74, Subpart C within such areas. The Government will coordinate with Lessor to ensure signage is consistent with Lessor's standards. Appurtenant to the Premises and included in the Lease are rights to use the following:

A. **Parking:** **127** parking spaces as depicted on the plan attached hereto as Exhibit "B", reserved for the exclusive use of the Government, of which **127** shall be structured/inside parking spaces and 0 shall be surface/outside parking spaces. A description of their location is as follows:

250 Delaware Avenue Parking Ramp:

42 spaces as depicted on the plan attached hereto and labeled Exhibit "B1" shall be located on the 4th level of the 250 Delaware Avenue parking ramp. The Lessor has guaranteed that 35 parking spaces shall be secured with fencing and gates to prevent unauthorized access to the parking area. The Lessor shall make every effort to extend the fenced and gated area to include the additional seven (7) parking spaces requested by the Government, but in the event that the Lessor cannot accommodate all or a portion of the seven spaces within the fenced and gated area the Lessor will reserve the remaining spaces for the exclusive use of the Government, and place them in close proximity to the fenced area. The Lessor will also credit the Government \$30/space/month for each space not provided within the fenced parking area.

250 Delaware Avenue Parking Ramp Lower Level:

6 spaces as depicted on the plan attached hereto and labeled Exhibit "B2" shall be located on-site in the lower level of the 250 Delaware Avenue Parking Ramp. Two (2) spaces shall be built out as [REDACTED] and four (4) spaces shall be parking. The parking spaces and [REDACTED] and gates to prevent unauthorized access to the area.

Augsburger Parking Ramp:

79 spaces as depicted on the plan attached hereto and labeled Exhibit "B3" shall be located on the 2nd level of the Augspurger Parking Ramp. The parking spaces shall be secured with fencing and gates to prevent unauthorized access to the parking area. Two (2) of the spaces depicted on the plan shall be reserved for compact cars.

In addition, the Lessor shall provide such additional parking spaces as required by the applicable code of the local government entity having jurisdiction over the Property.

3. The Rent and Other Consideration, as defined in Lease Paragraph 1.03, is modified and replaced as follows:

1.03 RENT AND OTHER CONSIDERATION (SEP 2013)

A. The Government shall pay the Lessor annual rent, payable in monthly installments in arrears, at the following rates:

	FIRM TERM (5 YEARS)	NON FIRM TERM (5 YEARS)
	ANNUAL RENT	ANNUAL RENT
SHELL RENT ¹	\$1,258,210.40	\$1,258,210.40
TENANT IMPROVEMENTS RENT ²	\$ 304,251.56	\$ 304,251.56
OPERATING COSTS ³	\$ 206,858.32	\$ 206,858.32
BUILDING SPECIFIC AMORTIZED CAPITAL (BSAC) ⁴	\$ 154,986.84	\$ 154,986.84
PARKING ⁵	\$ 55,336.80	\$ 55,336.80
TOTAL ANNUAL RENT	\$ 1,979,643.92	\$ 1,979,643.92

INITIALS: MM & GOV'T
LESSOR


GOV'T

¹Shell rent calculation:

(Firm Term) **\$23.60** per RSF multiplied by **53,314** RSF

(Non Firm Term) **\$23.60** per RSF multiplied by **53,314** RSF

²The Tenant Improvement Allowance of **\$2,283,749.12** is amortized at a rate of **6** percent per annum over **10** years.

³Operating Costs rent calculation: **\$3.88** per RSF multiplied by **53,314** RSF

⁴Building Specific Amortized Capital (BSAC) of **\$1,163,350.00** is amortized at a rate of **6** percent per annum over **10** years

⁵Parking costs are the sum of \$30,916.80 + \$12,000 + \$15,120.00 - \$2,700.00 as described below in sub-paragraph I.

In instances where the Lessor amortizes either the TI or BSAC for a period exceeding the Firm Term of the Lease, should the Government terminate the Lease after the Firm Term or does not otherwise renew or extend the term beyond the Firm Term, the Government shall not be liable for any costs, including unamortized costs beyond the Firm Term.

B. Free Rent Offered: Months 1, 2, 3, and 4 of the initial Lease term; therefore the rent for the first four months of the Lease will be **\$38,269.87/month** which accounts for the sum of the Tenant Improvements and the Building Specific Amortized Capital portion of the monthly rent.

C. Rent is subject to adjustment based upon a mutual on-site measurement of the Space upon acceptance, not to exceed **46,534** ABOASF based upon the methodology outlined under the "Payment" clause of GSA Form 3517.

D. Rent is subject to adjustment based upon the final Tenant Improvement (TI) cost to be amortized in the rental rate, as agreed upon by the parties subsequent to the Lease Award Date.

E. Rent is subject to adjustment based on the final Building Specific Amortized Capital (BSAC) cost to be amortized in the rental rate, as agreed upon by the parties subsequent to the Lease Award Date.

F. If the Government occupies the Premises for less than a full calendar month, then rent shall be prorated based on the actual number of days of occupancy for that month.

G. Rent shall be paid to Lessor by electronic funds transfer in accordance with the provisions of the General Clauses. Rent shall be payable to the Payee designated in the Lessor's Central Contractor Registration (CCR), now the System for Award Management (SAM). If the payee is different from the Lessor, both payee and Lessor must be registered in SAM.

H. Lessor shall provide to the Government, in exchange for the payment of rental and other specified consideration, the following:

1. The Leasehold interest in the Property described in the Paragraph entitled "The Premises."
2. All costs, expenses and fees to perform the work required for acceptance of the Premises in accordance with this Lease, including all costs for labor, materials, and equipment, professional fees, contractor fees, attorney fees, permit fees, inspection fees, and similar such fees, and all related expenses.
3. Performance or satisfaction of all other obligations set forth in this Lease; and all services, utilities, and maintenance required for the proper operation of the Property, the Building, and the Premises in accordance with the terms of the Lease, including, but not limited to, all inspections, modifications, repairs, replacements, and improvements required to be made thereto to meet the requirements of this Lease.

I. The costs made a part of this Lease for parking and [REDACTED] are as follows:

1. **Augspurger Ramp: 79** total secured and fenced structured spaces. 72 of these spaces have already been accounted for in the rent, but will incur an additional security cost of \$22.60 per space which will amount to an additional \$19,526.40 of rent per annum. The additional seven (7) spaces at a cost of \$135.60 per space, or \$11,390.40 per annum. The total additional rent incurred for the 79 parking spaces at the Augspurger Ramp is \$30,916.80 per annum.
2. **250 Delaware Avenue**, comprised of the following components:
 - a. **42** total secured and fenced structured spaces. 45 spaces were previously accounted for in the Lease at this location however the Agency is giving 3 spaces back therefore the rent will be credited for \$75.00 per space for a total \$2,700 per annum. The 42 spaces already accounted for in the rent will incur an additional security cost of \$30.00 per space which will amount to an additional \$15,120.00 of rent per annum. The adjusted total additional rent for the 42 spaces is \$12,420.00 per annum, but the cost may be adjusted in the event all 42 spaces cannot be fenced.
 - b. **4 additional secured and fenced parking spaces and [REDACTED]** and the additional rent incurred for the 6 spaces will be \$12,000.00 per annum.

INITIALS:

MJM
LESSOR

&

GOV'T

4. The Broker Commission and Commission Credit, as defined in Lease Paragraph 1.04, is modified and replaced as follows:

1.04 BROKER COMMISSION AND COMMISSION CREDIT (JUN 2012)

A. **Savills Studley, Inc.** (Broker) is the authorized real estate Broker representing GSA in connection with this Lease transaction. The total amount of the Commission is [REDACTED] and is earned upon Lease execution, payable according to the Commission Agreement signed between the two parties. Only [REDACTED] of the Commission will be payable to **Savills Studley, Inc.** with the remaining [REDACTED] which is the Commission Credit, to be credited to the shell rental portion of the annual rental payments due and owing to fully recapture this Commission Credit. The reduction in shell rent shall commence in month five (5) of the Lease rental payments and continue until the credit has been fully recaptured in equal monthly installments over the shortest time practicable.

B. Notwithstanding the "Rent and Other Consideration" paragraph of this Lease, the shell rental payments due and owing under this Lease shall be reduced to recapture fully this Commission Credit. The reduction in shell rent shall commence with the first month of the rental payments and continue as indicated in this schedule for adjusted Monthly Rent:

¹ Month 1 Rental Payment \$38,269.87

¹ Month 2 Rental Payment \$38,269.87

¹ Month 3 Rental Payment \$38,269.87

¹ Month 4 Rental Payment \$38,269.87

¹ Subject to change based on Final TI negotiations.

(END OF FREE SHELL AND OPERATING RENT PERIOD)

Month 5 Rental Payment **\$164,970.33** minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted 5th Month's Rent.*

Month 6 Rental Payment **\$164,970.33** minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted 6th Month's Rent.*

Month 7 Rental Payment **\$164,970.33** minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted 7th Month's Rent.*

* Subject to change based on adjustments outlined under the paragraph "Rent and Other Consideration."

5. The Renewal Rights, as defined in Lease Paragraph 1.06, is modified and replaced as follows:

1.06 RENEWAL RIGHTS (SEP 2013)

This Lease may be renewed at the option of the Government for one term of [REDACTED] at the following rental rate(s):

	OPTION TERM, YEARS [REDACTED]	
	ANNUAL RENT	ANNUAL RATE / RSF
SHELL RENTAL RATE	[REDACTED]	
OPERATING COSTS	OPERATING COST BASIS SHALL CONTINUE FROM THE EFFECTIVE YEAR OF THE LEASE. OPTION TERM IS SUBJECT TO CONTINUING ANNUAL ADJUSTMENTS.	

6. The Tenant Improvement Allowance, as defined in Lease Paragraph 1.08, is modified and replaced as follows:

1.08 TENANT IMPROVEMENT ALLOWANCE (AUG 2011)

The Tenant Improvement Allowance (TIA) for purposes of this Lease is **\$49.08** per ABOA SF. The TIA is the amount that the Lessor shall make available for the Government to be used for TIs. This amount is amortized in the rent over the **ten year term** of the Lease

INITIALS: MJM &
LESSOR

GOV'T

at an annual interest rate of 6 percent. The total TIA available to the Government, and calculated on the revised ABOASF, is **\$2,283,749.12**. If the Government elects to terminate the Lease any time after the firm term, the Government is not obligated to pay the remaining balance of the Tenant Improvement Allowance.

7. The Building Specific Amortized Capital, as defined in Lease Paragraph 1.11, is modified and replaced as follows:

1.11 BUILDING SPECIFIC AMORTIZED CAPITAL (SEP 2012)

For purposes of this Lease, the Building Specific Amortized Capital (BSAC) is **\$25.00** per ABOASF. The Lessor will make the total BSAC amount available to the Government, which will be used to fund security related improvements. This amount shall be amortized in the rent over the **10 year term** of this Lease at an annual interest rate of 6 percent. **The total BSAC available to the Government and calculated on the revised ABOASF of 46,534 is \$1,163,350.00.** If the Government elects to terminate the lease any time after the firm term, the Government is not obligated to pay the remaining balance of the BSAC Allowance.

**Reference Paragraph 1.12, Building Specific Amortized Capital Rental Adjustment, of the L201C for language on the Government's rights to adjust the BSAC allowance.*

8. Pursuant to Lease Section 4.03 Tenant Improvements Price Proposal (SEPT 2013), the Government has reviewed the tenant improvement costs totaling **\$4,855,655.69**, and has determined that they are fair and reasonable. In separate correspondence dated May 20, 2016, the Government issued a Notice to Proceed (NTP) with construction of the Tenant Improvements in the amount of **\$2,151,864.00** which represents the **Tenant Improvement Allowance** available for construction costs before the additional 2,690 ABOASF was recognized as part of the Lease Premises (the *Tenant Improvement Allowance has increased to \$2,283,749.12 per Paragraph 6 of this Lease Amendment*).

Upon completion, inspection and acceptance of the space, the Government shall reimburse the Lessor for the tenant improvements as follows: The Lessor and the Government hereby agree that, based upon the Final Construction Plans, the cost of the tenant improvements is **\$4,855,655.69**. Of this amount, the total tenant improvement amount to be amortized into the rent is **\$2,283,749.12**, over ten (10) years at a rate of 6%. The remaining balance of **\$2,571,906.57** shall be paid to the Lessor in a one-time, lump-sum payment upon the Lessor's submission of a proper invoice to the Government.

The Lessor must submit a properly executed invoice at: <http://www.finance.gsa.gov>.

A copy of the invoice must be provided to the Contracting Officer at the following address:

General Services Administration
Attn: Mary Nowobilski, Lease Contracting Officer
130 South Elmwood, Suite 420
Buffalo, NY 14201-2310

A proper invoice must include the following:

- Invoice date
- Name of the Lessor as shown on the Lease
- Lease contract number, building address, and a description, price, and quantity of the items delivered
- GSA PDN#: **PS0035023**

If the invoice is not submitted on company letterhead, the person(s) with whom the Lease contract is made must sign it.

9. The Percentage of Occupancy, as defined in Lease Paragraph 1.13, is modified and replaced as follows:

1.13 PERCENTAGE OF OCCUPANCY FOR TAX ADJUSTMENT (JUN 2012)

As of the Lease Award Date, the Government's Percentage of Occupancy, as defined in the "Real Estate Tax Adjustment" paragraph of this Lease is **28.70** percent. The Percentage of Occupancy is derived by dividing the total Government Space of **53,314** RSF by the total Building space of **185,782** RSF.

INITIALS: MJM &
LESSOR LESSOR

GOVT

10. The Operating Cost Base, as defined in Lease Paragraph 1.15, is modified and replaced as follows:

1.15 OPERATING COST BASE (SEP 2013)

The parties agree, for the purpose of applying the paragraph titled "Operating Costs Adjustment," that the Lessor's base rate for operating costs shall be **\$3.88** per RSF (\$206,858.32/annum). There will be no renegotiation of the operating cost rate, other than normal operating cost escalations, during the term of this Lease.

11. The construction drawings dated 10/29/2015, which were accepted by the Government and formed the basis of the proposal, are hereby incorporated by reference into this Lease. However it is noted that the additional space on the 1st floor and the secure room details will require revisions to the design.
12. Any change orders after the start of construction must be submitted in writing to the Contracting Officer for review and approval. The lessor cannot proceed with the changes unless agreed to in writing by the Contracting Officer. The consolidation of costs will be completed upon substantial completion of the space by the Lessor and acceptance by the Government, and the parties shall execute a subsequent Lease Amendment setting forth the firm term of the Lease, the amortization of the tenant improvement allowance and the annual rental rate.
13. The Lessor hereby waives future restoration rights as a result of these improvements.
14. Except as modified in this Agreement, all terms and conditions of the Lease shall remain in full force and effect and in the event that any of the terms and conditions of this Lease Amendment conflict with any terms and conditions of the Lease, the terms and conditions of this Lease Amendment shall control and govern.

INITIALS: MJM &
LESSOR


GOV'T